

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

HEMET UNIFIED SCHOOL DISTRICT.

OAH Case No. 2014100196

ORDER OF DETERMINATION OF  
SUFFICIENCY OF DUE PROCESS  
COMPLAINT

On October 2, 2014, Parents on behalf of Student filed with the Office of Administrative Hearings a Due Process Hearing Request<sup>1</sup> (complaint) naming the Hemet Unified School District as respondent.

On October 8, 2014, Hemet filed with OAH a Notice of Insufficiency as to Student's complaint. On October 13, 2014, Student filed a reply brief.

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.<sup>2</sup> The party filing the complaint is not entitled to a hearing unless the complaint meets the requirements of title 20 United States Code section 1415(b)(7)(A).

A complaint is sufficient if it contains: (1) a description of the nature of the problem of the child relating to the proposed initiation or change concerning the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to the child; (2) facts relating to the problem; and (3) a proposed resolution of the problem to the extent known and available to the party at the time.<sup>3</sup> These requirements prevent vague and confusing complaints, and promote fairness by providing the

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<sup>1</sup> A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under title 20 United States Code section 1415(b)(7)(A).

<sup>2</sup> 20 U.S.C. § 1415(b) & (c).

<sup>3</sup> 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

named parties with sufficient information to know how to prepare for the hearing and how to participate in resolution sessions and mediation.<sup>4</sup>

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”<sup>5</sup> The pleading requirements should be liberally construed in light of the broad remedial purposes of the IDEA and the relative informality of the due process hearings it authorizes.<sup>6</sup> Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.<sup>7</sup>

## DISCUSSION

Student’s complaint alleges six allegations or claims in the complaint, which are all insufficiently pled as discussed. Student’s complaint is insufficiently pled in that it fails to provide Hemet with the required notice of a description of the problem and the facts relating to the problem.

The complaint, which is designated as a cross-complaint,<sup>8</sup> is a 47 pages long and responds to Hemet’s complaint in OAH Case number 2014090716, and is filled with legal arguments and an overly detailed rendition of facts starting in 2009 through the present, with a listing of numerous parent-filed compliance complaints filed with the California Department of Education. The complaint is a listing of six allegations and proposed resolutions (including a partial legal argument),<sup>9</sup> and a short conclusion which summarizes

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<sup>4</sup> See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

<sup>5</sup> Sen. Rep. No. 108-185, *supra*, at p. 34.

<sup>6</sup> *Alexandra R. v. Brookline School Dist.* (D.N.H., Sept. 10, 2009, No. 06-cv-0215-JL) 2009 WL 2957991 at p.3 [nonpub. opn.]; *Escambia County Board of Educ. v. Benton* (S.D.Ala. 2005) 406 F. Supp.2d 1248, 1259-1260; *Sammons v. Polk County School Bd.* (M.D. Fla., Oct. 28, 2005, No. 8:04CV2657T24EAJ) 2005 WL 2850076 at p. 3[nonpub. opn.] ; but cf. *M.S.-G. v. Lenape Regional High School Dist.* (3d Cir. 2009) 306 Fed.Appx. 772, at p. 3[nonpub. opn.].

<sup>7</sup> Assistance to States for the Education of Children With Disabilities and Preschool Grants for Children With Disabilities, 71 Fed.Reg. 46540-46541, 46699 (Aug. 14, 2006).

<sup>8</sup> Hemet had earlier filed a Request for Due Process naming Student as respondent on September 19, 2014 in OAH Case Number 2014090716.

<sup>9</sup> Pages 37 through 46 of the complaint.

Student's issues and proposed resolutions. The factual rendition is confusing and hard to follow.

Student's first allegation is written thusly: "Whether the HUSD provided student (sic) with a FAPE (free appropriate public education) during the 2012-2013, 2013-2014, and 2014-2015 school years with regards to determining whether Student's current educational placement is a SDC (special day class) or Autism program, determining whether HUSD provided Student with the appropriate services regarding occupational therapy services including the Auditory Integration/Therapeutic Listening Program and in-house and school Applied Behavior Analysis Program ("ABA"), and determining whether HUSD was correct in refusing to fund or reimburse Student's Independent Psycho-educational assessment?"

The first allegation is unclear and a reasonable person would be unable to know what specifically is being alleged. The respondent should not be compelled to guess what is being alleged against it.

Allegation two simply states that Hemet failed to provide to Student a FAPE during school years 2012-2013 through present. Student fails to allege in what manner Hemet failed to provide Student with FAPE for each of the school years. The allegation is too vague to permit Hemet to be on notice what is being alleged against it.

Allegation three asks whether Student's current program is an SDC program or an Autism program. This allegation is unclear and vague. Hemet is not put on notice what is being alleged.

The fourth allegation is: "Are Student's occupation therapy services appropriate including Auditory Integration/Therapeutic Listening Program?" Because Student has alleged that Student has been denied a FAPE since the 2012-2013 school year, this allegation is unclear as to the time period being alleged and what the basis of the allegation that the occupation therapy services were not appropriate.

The fifth allegation is whether Student's in-home ABA program is appropriate. As in the fourth allegation, this allegation is unclear as Student has failed to specify the time period being alleged, and lacks factual support to demonstrate in what manner is the in-home ABA services are not appropriate.

Allegation six alleges that the Student was denied a FAPE because Hemet has refused to fund or reimburse Student for the cost of an independent psycho-educational Assessment. Student fails to aver any facts as to why Student would be entitled to a public funded independent assessment. Additionally, Student fails to allege any facts as to whether and when Student obtained a psycho-educational evaluation.

If Student files an amended complaint, Student should specifically list each issue and support each issue with facts to put Hemet on notice what is being alleged against it.

## ORDER

1. Student's complaint is insufficiently pled under section title 20 United States Code 1415(c)(2)(D).
2. Student shall be permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).<sup>10</sup>
3. The amended complaint shall comply with the requirements of title 20 United States Code section 1415(b)(7)(A)(ii), and shall be filed not later than 14 days from the date of this order.
4. If Student fails to file a timely amended complaint, the complaint will be dismissed.
5. All dates previously set in this matter are vacated.

DATE: October 14, 2014

/s/

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ROBERT HELFAND  
Administrative Law Judge  
Office of Administrative Hearings

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<sup>10</sup> The filing of an amended complaint will restart the applicable timelines for a due process hearing.